

AMENDED IN SENATE MARCH 22, 2004

SENATE BILL

No. 1363

Introduced by Senator Ducheny

February 18, 2004

An act to add Article 3.5 (commencing with Section 17568.5) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, *and to amend Section 396 of the Penal Code*, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 1363, as amended, Ducheny. Hotel and motel rates: natural disasters.

Existing law regulates advertising, including motel and motor court rate signs. *Existing law, upon the proclamation of a state of emergency or a declaration of a local emergency, and for a certain period following the proclamation or declaration, makes it a misdemeanor for a person, contractor, business, or other entity to sell or offer to sell certain goods and services for a price that exceeds by 10% the price charged by that person immediately prior to the proclamation of emergency, except as specified. Existing law allows for the extension of these prohibitions for additional 30-day periods under specified circumstances, and makes a violation an unfair business practice and an act of unfair competition.*

This bill would prohibit the owner or operator of a hotel or motel that is within 10 miles of a natural disaster when an emergency has been *proclaimed or declared by a federal, state, or local entity* from increasing its regular advertised rates by more than 30% for ~~6 months~~ *180 days* following the ~~natural disaster~~ *proclamation or declaration*, except as specified. *The bill would make a violation of this prohibition a misdemeanor, and would make a violation an unfair business practice and an act of unfair competition. The bill would provide for the*

extension of the prohibition for additional 30-day periods, under specified circumstances.

Because the bill would make a violation a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 3.5 (commencing with Section 17568.5)
2 is added to Chapter 1 of Part 3 of Division 7 of the Business and
3 Professions Code, to read:

4

5 Article 3.5. Hotel And Motel Advertised Rates

6

7 ~~17568.5. After a natural disaster when an emergency has been~~
8 ~~declared by a federal, state, or local entity, an owner or operator~~
9 ~~of a hotel or motel that is within 10 miles of the area physically~~
10 ~~affected by the disaster shall not increase the hotel or motel's~~
11 ~~regular advertised rates by more than 30 percent for a period of six~~
12 ~~months following the natural disaster.~~

13 17568.5. Upon the proclamation of a state of emergency
14 resulting from an earthquake, flood, fire, riot, storm, or other
15 natural disaster declared by the President of the United States or
16 the Governor, or upon the declaration of a local emergency
17 resulting from an earthquake, flood, fire, riot, storm, or other
18 natural disaster by the executive officer of any county, city, or city
19 and county, and for a period of 180 days following that
20 proclamation or declaration, an owner or operator of a hotel or
21 motel that is within 10 miles of the area physically affected by the
22 emergency may not increase the hotel or motel's regular rates, as
23 advertised immediately prior to the proclamation or declaration
24 of emergency, by more than 30 percent. This prohibition does not
25 apply if the owner or operator can prove that the increase in price



1 *is directly attributable to additional costs imposed on it for goods*
2 *or labor used in its business.*

3 *SEC. 2. Section 396 of the Penal Code is amended to read:*

4 396. (a) The Legislature hereby finds that during
5 emergencies and major disasters, including, but not limited to,
6 earthquakes, fires, floods, or civil disturbances, some merchants
7 have taken unfair advantage of consumers by greatly increasing
8 prices for essential consumer goods and services. While the
9 pricing of consumer goods and services is generally best left to the
10 marketplace under ordinary conditions, when a declared state of
11 emergency results in abnormal disruptions of the market, the
12 public interest requires that excessive and unjustified increases in
13 the prices of essential consumer goods and services be prohibited.
14 It is the intent of the Legislature in enacting this act to protect
15 citizens from excessive and unjustified increases in the prices
16 charged during or shortly after a declared state of emergency for
17 goods and services that are vital and necessary for the health,
18 safety, and welfare of consumers. Further it is the intent of the
19 Legislature that this section be liberally construed so that its
20 beneficial purposes may be served.

21 (b) Upon the proclamation of a state of emergency resulting
22 from an earthquake, flood, fire, riot, storm, or natural or manmade
23 disaster declared by the President of the United States or the
24 Governor, or upon the declaration of a local emergency resulting
25 from an earthquake, flood, fire, riot, storm, or natural or manmade
26 disaster by the executive officer of any county, city, or city and
27 county, and for a period of 30 days following that declaration, it
28 is unlawful for ~~any~~ a person, contractor, business, or other entity
29 to sell or offer to sell any consumer food items or goods, goods or
30 services used for emergency cleanup, emergency supplies,
31 medical supplies, home heating oil, building materials, housing,
32 transportation, freight, and storage services, or gasoline or other
33 motor fuels for a price of more than 10 percent above the price
34 charged by that person for those goods or services immediately
35 prior to the proclamation of emergency. However, a greater price
36 increase ~~shall not be~~ *is not* unlawful if that person can prove that
37 the increase in price was directly attributable to additional costs
38 imposed on it by the supplier of the goods, or directly attributable
39 to additional costs for labor or materials used to provide the
40 services, provided that in those situations where the increase in

1 price is attributable to additional costs imposed by the seller's
2 supplier or additional costs of providing the good or service during
3 the state of emergency, the price represents no more than 10
4 percent above the total of the cost to the seller plus the markup
5 customarily applied by the seller for that good or service in the
6 usual course of business immediately prior to the onset of the state
7 of emergency.

8 (c) Upon the proclamation of a state of emergency resulting
9 from an earthquake, flood, fire, riot, or storm declared by the
10 President of the United States or the Governor, or upon the
11 declaration of a local emergency resulting from an earthquake,
12 flood, fire, riot, or storm by the executive officer of any county,
13 city, or city and county, and for a period of 180 days following that
14 declaration, it is unlawful for ~~any~~ a contractor to sell or offer to sell
15 any repair or reconstruction services or any services used in
16 emergency cleanup for a price of more than 10 percent above the
17 price charged by that person for those services immediately prior
18 to the proclamation of emergency. However, a greater price
19 increase ~~shall not be~~ *is not* unlawful if that person can prove that
20 the increase in price was directly attributable to additional costs
21 imposed on it by the supplier of the goods, or directly attributable
22 to additional costs for labor or materials used to provide the
23 services, provided that in those situations where the increase in
24 price is attributable to the additional costs imposed by the
25 contractor's supplier or additional costs of providing the service
26 during the state of emergency, the price represents no more than
27 10 percent above the total of the cost to the contractor plus the
28 markup customarily applied by the contractor for that good or
29 service in the usual course of business immediately prior to the
30 onset of the state of emergency.

31 (d) *Upon the proclamation of a state of emergency resulting*
32 *from an earthquake, flood, fire, riot, storm, or other natural*
33 *disaster declared by the President of the United States or the*
34 *Governor, or upon the declaration of a local emergency resulting*
35 *from an earthquake, flood, fire, riot, storm, or other natural*
36 *disaster by the executive officer of any county, city, or city and*
37 *county, and for a period of 180 days following that proclamation*
38 *or declaration, it is unlawful for an owner or operator of a hotel*
39 *or motel that is within 10 miles of the area physically affected by*
40 *the emergency to increase the hotel or motel's regular rates, as*

1 *advertised immediately prior to the proclamation or declaration*
2 *of emergency, by more than 30 percent. However, a greater price*
3 *increase is not unlawful if the owner or operator can prove that the*
4 *increase in price is directly attributable to additional costs*
5 *imposed on it for goods or labor used in its business.*

6 (e) The provisions of this section may be extended for
7 additional 30-day periods by a local legislative body or the
8 California Legislature, if deemed necessary to protect the lives,
9 property, or welfare of the citizens.

10 ~~(e)~~

11 (f) A violation of this section is a misdemeanor punishable by
12 imprisonment in a county jail for a period not exceeding one year,
13 or by a fine of not more than ten thousand dollars (\$10,000), or by
14 both that fine and imprisonment.

15 ~~(f)~~

16 (g) A violation of this section shall constitute an unlawful
17 business practice and an act of unfair competition within the
18 meaning of Section 17200 of the Business and Professions Code.
19 The remedies and penalties provided by this section are
20 cumulative to each other, the remedies under Section 17200 of the
21 Business and Professions Code, and the remedies or penalties
22 available under all other laws of this state.

23 ~~(g)~~

24 (h) For the purposes of this section, *the following terms have*
25 *the following meanings:*

26 (1) “State of emergency” means a natural or manmade disaster
27 or emergency resulting from an earthquake, flood, fire, riot, or
28 storm for which a state of emergency has been declared by the
29 President of the United States or the Governor of California.

30 (2) “Local emergency” means a natural or manmade disaster
31 or emergency resulting from an earthquake, flood, fire, riot, or
32 storm for which a local emergency has been declared by the
33 executive officer or governing body of any city or county in
34 California.

35 (3) “Consumer food item” means any article that is used or
36 intended for use for food, drink, confection, or condiment by a
37 person or animal.

38 (4) “Repair or reconstruction services” means services
39 performed by any person who is required to be licensed under the
40 Contractors’ State License Law (Chapter 9 (commencing with

1 Section 7000) of Division 3 of the Business and Professions Code),
2 for repairs to residential or commercial property of any type that
3 is damaged as a result of a disaster.

4 (5) “Emergency supplies” includes, but is not limited to,
5 water, flashlights, radios, batteries, candles, blankets, soaps,
6 diapers, temporary shelters, tape, toiletries, plywood, nails, and
7 hammers.

8 (6) “Medical supplies” includes, but is not limited to,
9 prescription and nonprescription medications, bandages, gauze,
10 isopropyl alcohol, and antibacterial products.

11 (7) “Building materials” means lumber, construction tools,
12 windows, and anything else used in the building or rebuilding of
13 property.

14 (8) “Gasoline” means any fuel used to power any motor
15 vehicle or power tool.

16 (9) “Transportation, freight, and storage services” means any
17 service that is performed by any company that contracts to move,
18 store, or transport personal or business property or rents equipment
19 for those purposes.

20 (10) “Housing” means any rental housing leased on a
21 month-to-month term.

22 (11) “Goods” has the same meaning as defined in subdivision
23 (c) of Section 1689.5 of the Civil Code.

24 ~~(h)~~

25 (i) Nothing in this section shall preempt any local ordinance
26 prohibiting the same or similar conduct or imposing a more severe
27 penalty for the same conduct prohibited by this section.

28 ~~(i) Any~~

29 (j) A business offering an item for sale at a reduced price
30 immediately prior to the proclamation of the emergency may use
31 the price at which ~~they~~ it usually ~~sell~~ sells the item to calculate the
32 price pursuant to subdivision (b) or (c).

33 *SEC. 3. No reimbursement is required by this act pursuant to*
34 *Section 6 of Article XIII B of the California Constitution because*
35 *the only costs that may be incurred by a local agency or school*
36 *district will be incurred because this act creates a new crime or*
37 *infraction, eliminates a crime or infraction, or changes the penalty*
38 *for a crime or infraction, within the meaning of Section 17556 of*
39 *the Government Code, or changes the definition of a crime within*

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

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